

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 25 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LANADINE JAMIE BROWNFEATHER,
aka Lenadine Brownfeather, Lana
Brownfeather,

Defendant - Appellant.

No. 05-10539

D.C. No. CR-04-00283-DGC

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Arizona
David G. Campbell, District Judge, Presiding

Argued and Submitted August 16, 2006
San Francisco, California

Before: CANBY, THOMPSON, and HAWKINS, Circuit Judges.

Lanadine J. Brownfeather (“Brownfeather”) appeals her conviction by plea agreement for assault resulting in serious bodily injury. Although Brownfeather waived her right to appeal in the plea agreement, she alleges that her guilty plea was

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

not taken in compliance with Rule 11. See United States v. Jeronimo, 398 F.3d 1149, 1153 n.2 (9th Cir. 2005); Fed. R. Crim. P. 11.

However, the magistrate judge did not violate Rule 11(c)(1)'s prohibition against judicial participation in plea discussions. By ascertaining the factual basis for the plea and ensuring Brownfeather understood the terms of the agreement, he was fulfilling other Rule 11 obligations. See United States v. Andrade-Larrios, 39 F.3d 986, 990 (9th Cir. 1994). In addition, the court may consider all evidence before it in establishing a factual basis for the plea, including evidence from sources other than the defendant. See United States v. Lomow, 266 F.3d 1013, 1017-18 (9th Cir. 2001).

The additional comments to which Brownfeather objects are best characterized as advice regarding how Brownfeather should conduct herself in front of the sentencing judge; although these comments were arguably extraneous, they do not constitute improper participation in the plea process in violation of Rule 11(c)(1), and certainly do not rise to the level of plain or obvious error. See United States v. Frank, 36 F.3d 898, 903 (9th Cir. 1994) (Rule 11 does not “establish a series of traps for imperfectly articulated oral remarks”).

Brownfeather's change of plea was taken in conformity with Rule 11, and her waiver of the right to appeal was knowing and voluntary. Because the waiver is valid

and enforceable, we lack jurisdiction over her appeal. See Jeronimo, 398 F.3d at 1157.

DISMISSED.